



## HNS CONVENTION

### Note by the Director

<b>Summary:</b>	Information is given on recent developments in respect of the preparations for the entry into force of the HNS Convention.
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<b>Action to be taken:</b>	Information to be noted.
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### 1 Introduction

The Assembly noted at its 1st session that, in a Resolution of the Conference which had adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), it had been invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. The Assembly instructed the Director to carry out the tasks requested by the HNS Conference (document 92FUND/A.1/34, paragraphs 33.1.1 - 33.1.3), on the basis that all expenses incurred would be repaid by the HNS Fund with interest.

### 2 Status of the Convention

2.1 Since the October 2007 session of the Assembly, four further States (Hungary, Liberia, Sierra Leone and Syrian Arab Republic) have ratified the HNS Convention, bringing the total number of States which have ratified the Convention to 13, ie Angola, Cyprus, Hungary, Liberia, Lithuania, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Sierra Leone, Slovenia, Syrian Arab Republic and Tonga.

2.2 Article 43 of the HNS Convention requires a State, when submitting an instrument of ratification and annually thereafter until the Convention enters into force for that State, to submit information on the total quantities of contributing cargo received in respect of each account and sector to the Secretary-General of IMO. As at 23 September 2008, only two of the States (Cyprus and Slovenia) that have ratified the Convention had submitted such information.

### 3 Recent developments

3.1 At its 12th session in October 2007, the Assembly decided to establish a Working Group ('the HNS Focus Group'), with the aim of facilitating the entry into force of the HNS Convention and with the Terms of Reference set out in section 4 of document 92FUND/A.13/22.

- 3.2 The HNS Focus Group held two meetings, in March 2008 and June 2008. The reports of these meetings are contained in documents 92FUND/A/ES.13/5/92FUND/WGR.5/8 and 92FUND/A.13/22/92FUND/WGR.5/13.
- 3.3 In accordance with its Terms of Reference, the HNS Focus Group developed a Protocol to the HNS Convention and reached a consensus on all outstanding issues, except that regarding the person liable to pay contributions to the LNG Account. After a lengthy discussion, the HNS Focus Group decided to maintain the current wording of the draft Protocol, identifying the receiver, as defined in Article 1.4 of the Convention, as the person liable for contributions to the LNG Account. However, it was noted that, whilst the majority of the Group was in favour of that concept, a significant number of delegations had supported the concept of the titleholder being the primary person liable for contributions.
- 3.4 Upon the completion of its work, the Group made recommendations to the June 2008 session of the Administrative Council, acting on behalf of the Assembly (document 92FUND/AC.4/A/ES.13/9, section 5).
- 3.5 The Administrative Council took note of the Report of the Chairman of the HNS Focus Group (document 92FUND/A/ES.13/5/3) and discussed the recommendations of the Group. In respect of contributions to the LNG Account, the Administrative Council noted that the differences between the two sides were of a political, economic and policy nature and not just a matter of drafting. It further noted that it was essential for efforts to be made to bridge the gap between the two sides in order to reach a consensus on this issue quickly. It was noted that failure to reach a consensus by the time of the meeting of IMO's Legal Committee in October 2008 could threaten the viability of the Protocol, since the Legal Committee could only decide to recommend holding a Diplomatic Conference with the aim of adopting a Protocol if it were clear that there would be a good chance of success.
- 3.6 The delegation of Malaysia offered to coordinate an informal correspondence group with the aim of developing a compromise proposal in respect of contributions to the LNG Account that would make the HNS Convention attractive to as many States as possible. That delegation invited any interested States and organisations to participate in the work of the Correspondence Group.
- 3.7 The Administrative Council expressed its gratitude to the Chairman of the HNS Focus Group for his excellent work, as well as to the Malaysian delegation for its very helpful and constructive proposal and noted that many States from both sides of the divide had expressed their intention to participate in the Correspondence Group.
- 3.8 The Administrative Council approved the text of the draft Protocol and instructed the Director as set out in document 92FUND/AC.4/A/ES.13/9, paragraphs 5.18-5.20.
- 3.9 As instructed by the Administrative Council, the Director finalised the text of the draft Protocol, retaining footnotes of a technical or editorial nature in order to aid its interpretation and, by means of a letter dated 29 July 2008, submitted the text of the draft Protocol to the Secretary-General of IMO, requesting him to refer it to the Legal Committee for consideration with a view to convening a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.
- 3.10 As further instructed, the Director included with his letter to the Secretary-General the Record of Decisions of the June 2008 session of the Administrative Council. He also brought the following topics to his attention, where consideration of amendments to the Protocol by the Legal Committee might be beneficial:
- The time periods for the amendment procedure in Article 19 of the draft Protocol, which might be brought into line with Article 24 of the Supplementary Fund Protocol.
  - The entry into force conditions in Article 17 of the draft Protocol, since these will be crucial to ensuring the successful entry into force of the Convention.

- 3.11 The Secretariats of the IOPC Funds and IMO have agreed on necessary changes to Article 1, paragraph 5(a)(vii) of the HNS Convention, in accordance with the decisions taken by the Administrative Council at its 13th extraordinary session (document 92FUND/AC.4/A/ES.13/9, paragraphs 5.4 and 5.18).
- 3.12 The IMO Secretariat has submitted the draft Protocol and related information for consideration by the Legal Committee during its 94th session to be held during the week commencing 20 October 2008 (document LEG 94/4).
- 3.13 The Correspondence Group, coordinated by the delegation of Malaysia, has developed a compromise proposal in respect of contributions to the LNG Account, which is contained in a document submitted by Australia, Belgium, Canada, Denmark, France, Germany, Japan, Malaysia, the Netherlands, Norway, Sweden and the United Kingdom (document LEG 94/4/1), for consideration during the 94th session of the Legal Committee.

**4 Action to be taken by the Assembly**

The Assembly is invited to take note of the information contained in this document.

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